

September 14, 1990

BOI20.22

Mr. John Turner, Director
U.S. Fish and Wildlife Service
Interior Building, Room 3012
18th and C Streets
Washington, D.C. 20240

Dear Mr. Turner:

Subject: Response to Notice of Finding on Petition to List the Rocky Mountain
Population of the Trumpeter Swan

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I am writing on behalf of the Idaho Chapter of the Wildlife Society (TWS) regarding the U.S. Fish and Wildlife Service (FWS) finding regarding TWS's trumpeter swan petition. After careful consideration of the finding and a review of our options and available financial resources we have decided ^{to defer} not to mount a legal challenge to the finding at this time.

Should we leave them in situ per se until the end?

However, this decision in no way suggests that TWS concurs with the finding. TWS still believes that this population is at serious risk from numerous factors stated in our original petition. The finding raises more questions than it answers and leaves TWS feeling very uncertain about the future of the Rocky Mountain population of trumpeter swans. Specific comments regarding inadequacies of the finding as the basis for dismissal of TWS's petition are described below.

The finding states that initial results of winter range expansion efforts appear promising. The finding further states that, "the program (range expansion) is currently progressing quite well . . ." We know of no basis for such statements. In May 1989, the trumpeter swan subcommittee of the Pacific Flyway Council rated overall progress toward establishing new swan wintering sites as "limited" and concluded that "no progress" had been made toward the goal of developing a long-term strategy for effectively dealing with winter range expansion problems. To our knowledge, range

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expansion efforts since May 1989 have not been largely successful. Therefore, TWS questions the assertion by FWS that "initial results appear promising" and that "the program is progressing quite well."

The finding acknowledges, and TWS agrees, that range expansion is a long-term process requiring, in the interim, sufficient minimum flow in the Henry's Fork to maintain access to feeding areas. TWS would again like to point out that the ^{almost elimination} total eat-out of submerged aquatic macrophytes ^{by swans} during the 1989-90 winter highlights the importance of a greatly accelerated range expansion program that far exceeds the present efforts of the states and FWS. Apparently providing access to food on the Henry's Fork may not provide the time necessary to successfully implement a long-term range expansion program that proceeds at a pace dictated by present levels of financial support from FWS.

This brings us to the issue of winter flows in the Henry's Fork and financing mechanisms to provide these flows. The finding states that the FWS, Bureau of Reclamation, and other parties established a minimum flow of 500 cfs below the Buffalo River to maintain adequate winter habitat for swans. This would require a release of 300 cfs from Island Park Reservoir. The finding fails to acknowledge that this "established minimum flow" has no legal basis and only represents a target flow. The finding also

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fails to recognize that this 500 cfs minimum flow would only maintain a full wetted perimeter in the channel and would not be adequate to maintain ^{ice} in ice-free conditions during cold weather. Flows of 800 cfs (600 cfs from Island Park) or more are necessary to break up ice that would form under the 500 cfs flow scenario during cold periods. Failure to recognize the need for pulsed high flows represents a significant gap in FWS's "commitment to try to purchase the necessary water to maintain a minimum flow of 500 cfs during the winter."

The issue of funding for the purchase of water has also not been addressed in the finding. In documents obtained from TWS's FOIA request ^{we} ~~it was~~ learned that FWS estimates ^{an} ~~that~~ an average of \$43,400 would be necessary to purchase water to maintain the 500 cfs flow during an average year. FWS further estimated that \$214,000 would have been necessary to maintain this flow in the winter of 1988-89. These figures do not take into account the additional monies necessary to purchase water for pulse flows to break up ice that would form under cold conditions with the 500 cfs flow. The finding fails to provide a firm commitment for funding water purchases. Based on past experience TWS doubts the FWS's ability to provide adequate funding to purchase water during the upcoming winter, especially with reservoir storage at very low levels.

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FWS bases its dismissal of the TWS petition on two premises. First, that a minimum streamflow has been established, and second that the FWS is committed to "try to purchase" the necessary water to maintain a minimum flow of 500 cfs during the winter. As previously noted, the 500 cfs minimum streamflow has no legal standing and is inadequate to maintain ice-free conditions during severe weather. The FWS has not demonstrated that it has the ability to adequately fund the purchase of 300 cfs, much less the additional water necessary to provide higher pulse flows. Finally, information^{we} obtained from USBR indicates that little progress has been made to date on an agreement with downstream power generators to provide a funding source for winter water purchases.

Having pointed out these serious shortcomings of the FWS's finding on the petition to list trumpeter swans TWS feels it is up to the FWS to prove it can live to the many commitments it has made. ^{we are} TWS is anxious to work with the FWS and the Flyway Council to garner support for range expansion efforts and other habitat protection measures to prevent further population declines. However, we will be closely following FWS's actions on this issue to be sure every possible effort is being made to eliminate the continuing threats to the Rocky Mountain population of trumpeter swans.

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Sincerely,

CH2M HILL

Michael C. Creamer

Attorney for the Idaho Chapter of the Wildlife Society

BOIC4/147.51/jai

CC = John Keys, USBR
FWS Regional Directors

Flyway Council

FWS - Boise, Helena, Wyoming

Cong. Stallings, Id.